not "use services that are not competitive to subsidize services that are subject to competition."[547]

219. BellSouth has argued that requiring BOCs to provide electronic publishing services through a "separated" affiliate or joint venture violates the First Amendment.[548] As noted above, we find that this result is required by the Act. Although the courts have ultimate authority to determine the constitutionality of this and other statutes, we find it appropriate to state that we find BellSouth's argument to be without merit.[549] To the extent that BOC provision of electronic publishing services constitutes commercial speech for First Amendment purposes, the section 274 "separated" affiliate or joint venture requirement neither prohibits the BOCs from providing such services, nor places any restrictions on the content of the information the BOCs may provide.[550] Instead, the section 274 "separated" affiliate or joint venture requirement is a content-neutral restriction on the manner in which BOCs may provide electronic publishing services, intended by Congress to protect against improper cost allocation and discrimination concerns. Thus, we conclude that the "separated" affiliate or joint venture requirement imposed by section 274 on BOC provision of electronic publishing services does not violate the First Amendment.[551] BellSouth has also argued that requiring BOCs to provide electronic publishing services through a "separated" affiliate or joint venture constitutes an unconstitutional Bill of Attainder. Although the courts have ultimate authority to determine the constitutionality of this and other statutes, we find it appropriate to state that we find BellSouth's argument to be without merit.[552] We agree with NAA that section 274 does not single out the BOCs for punishment, but merely imposes temporary, narrowly-focused, economic regulations.[553]

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547 Id.

548 BellSouth Comments at 40.

549 See note 148, supra.

550 Like the must-carry rules at issue in Turner Broadcasting System, the section 272 separate affiliate requirement "on [its] face impose[s] burdens and confer[s] benefits without reference to the content of speech." Turner Broadcasting System, 114 S. Ct. at 2460.

551 Content-neutral time, place, and manner restrictions that serve a substantial government interest are constitutionally permissible. See, e.g., City of Renton, 475 U.S. 41.

552 See note 148, supra.

553 See NAA Reply at 2.

c. Compliance Review

220. Section 274(b)(8) requires that a BOC and its electronic publishing "separated" affiliate or joint venture each perform an annual compliance review conducted by "an independent entity" to determine compliance with section 274.[554] In the *NPRM*, we sought comment on how such compliance reviews should be conducted and specifically what matters the reviews should encompass.[555] We proposed to require the independent entity to prepare and file with the Commission reports describing: 1) the scope of its compliance review, including a description of how the affiliate's or joint venture's books were examined and the extent of the examination; (2) the independent entity's conclusion on whether examination of the books has revealed compliance or non-compliance with the affiliate transactions rules and any other non-discrimination requirements imposed by Commission rules; (3) a description of any limitations imposed on the independent entity in the course of its review by the affiliate or joint venture or other circumstances that might affect the entity's opinion; and (4) statements by the independent entity as to whether the carrier's accounting and affiliate transactions methodologies conform to the Act and the Commission's rules and whether the carrier has accurately applied the methodologies. We sought comment on the necessity or desirability of this approach. We also sought comment on what safeguards we may need to adopt to protect proprietary information contained in the compliance review report "from being used for purposes other than to enforce or pursue remedies under [section 274]."[556]

<u>Comments</u>:

221. NAA is the only commenter to support the Commission's proposal related to the method for conducting, and the scope of, annual compliance reviews.[557] Ameritech and PacTel contend that section 274(b)(8) clearly establishes the requirements of the annual compliance review and therefore argue that the Commission should not specify any procedures for conducting the annual compliance reviews.[558] USTA proposes that the annual compliance reviews be conducted in accordance with standards set forth by the American Institute of Certified Public Accountants.[559] YPPA argues that the independent compliance review

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[554] 47 U.S.C. § 274(b)(8).

[555] <u>NPRM</u>, 11 FCC Rcd at 9105 para. 106.

[556] <u>Id</u>. at 9106 para. 107. <u>See also</u> 47 U.S.C. § 274(b)(9).

[557] NAA Comments at 3.

[558] Ameritech Comments at 27; PacTel Comments at 32-33.

required by section 274(b)(8) should consist only of an examination of the written records of transactions between a BOC and its electronic publishing "separated" affiliate or joint venture and should include a report detailing the scope and conclusion of the examination and any limitations placed on the examiner. Wisconsin PSC recommends the use of NARUC's resolution discussed in section IV.B.1.f. above as a "starting point for discussions between the states and the FCC concerning [compliance reviews under section 274]."[560]

222. PacTel recommends that to the extent overlap exists, the Commission should allow the annual compliance review under section 274 to satisfy the requirement of an annual cost allocation manual audit.[561] US West recommends that the Commission require the annual cost allocation manual audit to be conducted biennially to streamline current regulations and reduce redundancy.[562]

223. YPPA notes that the timing of the annual compliance review may vary, depending on whether the affiliate provided electronic publishing services at the time of the enactment of the 1996 Act. YPPA argues that the first audit for grandfathered services should be conducted by February 8, 1998 because affiliates need not comply with the requirements of section 274 until February 8, 1997. For non-grandfathered services, YPPA contends that the first audit should be conducted one year after the affiliate starts to engage in electronic publishing activities.[563]

224. Most commenters that address the matter argue that the Commission's policies regarding protection of proprietary information would adequately protect proprietary information contained in the compliance review report.[564] PacTel does contend, however, that the BOCs should be allowed to exclude any competitively-sensitive information from the compliance review report because of the competitive nature of the electronic publishing business.[565] BellSouth recommends the Commission allow the BOCs and their electronic

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[559] USTA Comments at 27. See also Bell Atlantic Comments at 10.

[560] Wisconsin PSC Comments at 14.

[561] PacTel Comments at 33.

[562] US West Comments at 27.

[563] YPPA Comments at 4.

[564] See, e.g., Ameritech Comments at 27; NAA Comments at 3; PacTel Comments at 33; USTA Comments at 27; US West Comments at 27; YPPA Comments at 3.

[565] PacTel Comments at 33.

publishing "separated" affiliates or joint ventures to file two versions of the compliance review report--a public version with proprietary information omitted and a confidential version. BellSouth argues that the Commission should release the confidential version under a protective order only after a persuasive showing that access is necessary to enforce or pursue remedies under section 274.[566]

Discussion:

225. We decline to adopt the proposal presented in the *NPRM* related to the method for conducting, and the scope of, annual compliance reviews. We note that the language of section 274(b)(8) provides less stringent requirements than section 272(d)'s audit requirement.[567] For example, section 274(b)(8) only requires a compliance review performed by an independent entity, rather than a federal/State joint audit conducted by a trained independent auditor.[568] Under section 274(b)(8), the party obtaining the compliance review need only file a report of exceptions and corrective action to the Commission for public inspection, making the compliance review itself available only to "lawful authorities."[569] In contrast, section 272(d) requires the BOC to file the final audit report required under that section with the Commission and with the State commission of each state in which the BOC provides service, which will make such report available for public inspection and comment.[570] Moreover, section 274(e) provides a right of action to any person claiming that an act or practice of the BOC, affiliate, or "separated" affiliate has violated the requirements of section 274.[571] In view of this, we find that an oversight mechanism similar to the one we adopt in this Order for section 272(d) is not necessary to implement the provisions of section 274(b)(8) and we conclude that we need not adopt any rules regarding the compliance review beyond the plain language of section 274(b)(8)(A). Because of the differences between a compliance review under section 274 and an audit, we further conclude that a carrier may not use the

566 BellSouth Comments at 42.

567 See 47 U.S.C. §§ 272(d), 274(b)(8).

568 Id. § 274(b)(8).

569 Id.

570 Id. § 272(d).

571 Id. § 274(e).

electronic publishing compliance review to satisfy any portion of the annual cost allocation manual audit required by section 64.904 of the Commission's rules.[572]

226. Section 274(b)(9) requires the BOC and its electronic publishing "separated" affiliate or joint venture to file a report with the Commission of any exceptions and corrective action resulting from the compliance review.[573] Section 274(b)(9) further requires the Commission to "allow any person to inspect and copy such report subject to reasonable safeguards to protect any proprietary information contained in such report from being used for purposes other than to enforce or pursue remedies under [section 274]."[574] We find that these requirements of section 274(b)(9) are self-effectuating and, therefore, we need not adopt any rules regarding this requirement beyond the plain language of section 274(b)(9). We will apply the same treatment to confidential information in such reports as we apply to confidential information contained in other Commission filings.[575]

d. Section 274(f)'s Reporting Requirement

227. Section 274(f) requires any "separated" affiliate under section 274 to file annual reports with the Commission "in a form substantially equivalent to the Form 10-K required by regulations of the Securities and Exchange Commission."[576] In the *NPRM*, we tentatively concluded that to minimize burdens on the filing companies, we should require the "separated" affiliate to file the Form 10-K with us as well as the SEC.[577] We recognized, however, that not all "separated" affiliates providing electronic publishing services would be subject to the SEC's 10-K requirement and sought comment on what "substantially equivalent to the Form 10-K" means with regard to these "separated" affiliates.

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[572] 47 C.F.R. § 64.904.

[573] 47 U.S.C. § 274(b)(9).

[574] Id.

[575] We are currently examining the protection of confidential information in the Confidential Information Notice.

[576] 47 U.S.C. § 274(f).

[577] NPRM, 11 FCC Rcd at 9106 para. 108.

Comments:

228. BellSouth agrees that the filing requirements we proposed in the *NPRM* will satisfy section 274(f).[578] For those electronic publishing "separated" affiliates not subject to the SEC's Form 10-K requirement, BellSouth recommends that the Commission adopt a standard report that solicits information relevant to the concerns outlined in section 274 and not require the Form 10-K itself.[579] BellSouth argues that this report should contain a description of the entity filing the report, summary financial statements with representations of management, a list of the officers and directors of the entity, a description of any financing activity the entity undertakes, and specific transactional compliance results obtained from the annual compliance review required by section 274(b)(8).[580]

229. YPPA and NAA argue that the Commission should accept the electronic publishing "separated" affiliate or joint venture's Form 10-K if its stock is publicly traded.[581] YPPA contends that if the "separated" affiliate's stock is not publicly traded, the Commission should accept the Form 10-K of the "separated" affiliate's holding company.[582] NAA disagrees.[583] NAA maintains that the language of the Act clearly requires "[a]ny separated affiliate," not the holding company, to file the annual report.[584] NAA argues that the Form 10-K of a holding company would fail to provide the Commission and third parties with essential financial and other information about the "separated" affiliate's operations.[585] Instead, NAA proposes that the "separated" affiliate should file a report containing the same information as in a Form 10-K, except for such information that would only be relevant to a publicly-traded corporation.[586] YPPA argues that, if neither the "separated" affiliate nor the

578 BellSouth Comments at 43-44; BellSouth Reply at 21.

579 Id.

580 Id.

581 NAA Comments at 3-4; YPPA Comments at 5. See also PacTel Comments at 33.

582 YPPA Comments at 5. See also US West Comments at 23-24.

583 NAA Reply at 3.

584 Id.

585 Id.

586 NAA Comments at 3-4.

holding company are required to file a Form 10-K with the SEC, then the Commission should require the "separated" affiliate to complete and file a Form 10-K with the Commission.[587]

Discussion:

230. To minimize burdens on the filing companies, we adopt our tentative conclusion that when an electronic publishing "separated" affiliate already files a Form 10-K with the SEC, the "separated" affiliate may file the same Form 10-K with the Common Carrier Bureau within 90 days after the end of the "separated" affiliate's fiscal year in satisfaction of section 274(f)'s requirements. We disagree with BellSouth that, for electronic publishing "separated" affiliates not subject to the SEC's Form 10-K filing requirement, we should adopt a standard report that solicits only "that information that is relevant to the concerns outlined in section 274."[588] Such a requirement would not satisfy the explicit language of section 274, that requires that "separated" affiliates "file with the Commission annual reports in a form substantially equivalent to the form 10K required by [the SEC]."[589] Moreover, we believe that by requiring all electronic publishing "separated" affiliates to file annual reports containing the same information in the same format, we will improve our ability to ensure compliance with the provisions of section 274. We agree with NAA that the Form 10-K of a "separated" affiliate's holding company would fail to provide the Commission and third parties with adequate information about the "separated" affiliate's operations to ensure compliance with section 274.[590] Because the Form 10-K of the holding company would present only consolidated information, the Commission and third parties could not identify from that form the account balances related to the activities of the electronic publishing "separated" affiliate. For each "separated" affiliate not subject to the SEC's Form 10-K requirement, however, we conclude that the "separated" affiliate need not file an actual SEC Form 10-K with the Commission. Instead, such affiliates must file with the Commission a report containing the same information as is required in the SEC's Form 10-K. In accordance with section 274(f), the report must be organized "in a form substantially equivalent to the Form 10-K required by regulations of the [SEC]."[591]

[587] YPPA Comments at 5.

[588] BellSouth Comments at 44.

[589] 47 U.S.C. § 274(f) (emphasis added).

[590] NAA Reply at 6.

[591] 47 U.S.C. § 274(f).

e. Section 274 Transactional Requirements

231. Section 274(b)(1) requires the "separated" affiliate or joint venture and the BOC with which it is affiliated to "maintain separate books, records, and accounts and prepare separate financial statements."[592] In the *NPRM*, we invited comment on the steps we should take to implement this provision.[593] We also asked commenters to address whether it is necessary for the Commission to adopt any additional accounting, bookkeeping,or record-keeping requirements for these affiliates and joint ventures and, if so, what those additional requirements should be.

232. Section 274(b) requires the "separated" affiliate or joint venture to "be operated independently from the [BOC]."[594] Pursuant to section 274(b)(3), the "separated" affiliate or joint venture and the BOC with which it is affiliated must "carry out transactions (A) in a manner consistent with such independence, (B) pursuant to written contracts or tariffs that are filed with the Commission and made publicly available, and (C) in a manner that is auditable in accordance with generally accepted auditing standards."[595] We also sought comment on the meaning of "in a manner consistent with such independence." In addition, we sought comment on whether any regulations are necessary to implement the provisions of section 274(b)(3)(A) and (B).[596]

233. In the *NPRM*, we further sought comment on whether, and if so, how we should amend our rules to implement the requirement under section 274(b)(3)(C) that transactions be "auditable in accordance with generally accepted auditing standards."[597] We noted that generally accepted auditing standards refer to standards and guidelines promulgated by the American Institute of Certified Public Accountants that an independent auditor must follow when preparing for and conducting an audit of a company's financial statements. These standards require, inter alia, that the auditor review a company's internal controls and determine whether adequate documentation exists to verify that the company has recorded

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592 Id. § 274(b)(1).

593 NPRM, 11 FCC Rcd at 9106 para. 109.

594 47 U.S.C. § 274(b).

595 Id. § 274(b)(3).

596 NPRM, 11 FCC Rcd at 9106-07 para. 110.

597 Id. at 9107 para. 111. See also 47 U.S.C. § 274(b)(3)(c).

transactions on its books in a manner consistent with generally accepted accounting principles.[598]

234. Section 274(b)(4) requires the "separated" affiliate or joint venture to "value any assets that are transferred directly or indirectly from the [BOC] to a separated affiliate or joint venture, and record any transactions by which such assets are transferred, in accordance with such regulations as may be prescribed by the Commission or a State commission to prevent improper cross subsidies."[599] We proposed elsewhere in the *NPRM* to conform our valuation methods under the affiliate transactions rules governing provision of services to those governing asset transfers. Regardless of the resolution of that issue in this proceeding, because section 274 specifically addresses asset transfers between a BOC and its "separated" affiliate or joint venture, we sought comment in the *NPRM* on whether we should distinguish between asset transfers and the provision of services in the context of electronic publishing affiliate transactions.[600]

<u>Comments</u>:

235. NAA and PacTel argue that section 274(b)(1)'s requirement of separate books, records, accounts, and financial statements is self-effectuating and, therefore, the Commission need not establish any additional regulations.[601] BellSouth and NYNEX contend that the Commission should direct the "separated" affiliate or joint venture to keep their books, records, and accounts in accordance with GAAP in order to satisfy section 274(b)(1).[602] Ameritech argues that application of the SEC's Form 10-K reporting regulations, discussed in section IV.B.3.d. above, would ensure that a "separated" affiliate maintains its books, records, and accounts in accordance with GAAP and would therefore obviate the need for any additional rules to implement section 274(b)(1).[603]

598 <u>See</u> section IV.B.1.c., <u>supra</u>, for a discussion of generally accepted accounting principles.

599 47 U.S.C. § 274(b)(4).

600 <u>NPRM</u>, 11 FCC Rcd at 9107 para. 112.

601 NAA Comments at 4; PacTel Comments at 34. <u>See also</u> US West Comments at 22; YPPA Comments at 6.

602 BellSouth Comments at 44; NYNEX Comments at 31.

603 Ameritech Comments at 27-28 (making the same argument for section 274(b)(3)(C)).

236. NAA argues that section 274(b)(3)(A)'s requirement that transactions be carried out "in a manner consistent with such independence" requires transactions to occur as they would between unrelated parties (*i.e.*, on an "arm's length basis").[604] PacTel and US West contend that the requirements of section 274(b)(3)(A) are self-effectuating and, therefore, the Commission need not establish any additional regulations.[605]

237. NAA contends that section 274(b)(3)(B)'s requirement that transactions be carried out "pursuant to written contracts or tariffs that are filed with the Commission and made publicly available" is self-effectuating and, therefore, the Commission need not establish any additional regulations.[606]

238. BellSouth maintains that section 274(b)(3)(C)'s requirement that transactions be carried out "in a manner that is auditable in accordance with generally accepted auditing standards" requires that the section 274 "separated" electronic publishing affiliate or joint venture maintain its books in accordance with GAAP.[607] PacTel and US West contend that the requirements of section 274(b)(3)(C) are self-effectuating and, therefore, the Commission need not establish any additional regulations.[608]

239. Ameritech contends that to the extent the affiliate transactions rules apply, the Commission need not distinguish between asset transfers and services in the case of electronic publishing.[609]

Discussion:

240. We agree with NAA and PacTel that section 274(b)(1)'s requirement of separate books, records, accounts, and financial statements is self-effectuating and, therefore, we need not adopt any rules regarding this requirement beyond the plain language of section 274(b)(1).

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604 NAA Comments at 4.

605 PacTel Comments at 34; US West Comments at 23. See also BellSouth Comments at 45; YPPA Comments at 6.

606 NAA Comments at 4. See also YPPA Comments at 6.

607 BellSouth Comments at 45.

608 PacTel Comments at 34; US West Comments at 23. See also YPPA Comments at 6.

609 Ameritech Comments at 28.

241. We agree with NAA that section 274(b)(3)(A)'s requirement that transactions be carried out "in a manner consistent with such independence"[610] requires that transactions between a "separated" electronic publishing affiliate or joint venture and its affiliated BOC occur on an arm's length basis, as the transaction would occur between unrelated parties.[611] The phrase "such independence" in section 274(b)(3)(A) refers to section 274(b)'s requirement that a "separated" electronic publishing affiliate or joint venture "be operated independently from the [BOC]."[612] Consistent with this conclusion, we determined in section IV.B.3.b. above that we should apply our affiliate transactions rules, as modified in this order, to transactions between BOCs and their "separated" electronic publishing affiliates or joint ventures.

242. We are unpersuaded by NAA's argument that the language of section 274(b)(3)(B) is self-effectuating. We find the language of section 274(b)(3)(B) to be ambiguous. Pursuant to this section, a BOC and its separated affiliate shall carry out transactions "pursuant to written contracts or tariffs that are filed with the Commission and made publicly available."[613] From this language it is unclear whether written contracts must be filed with the Commission or whether only tariffs are required to be filed with the Commission. It is also unclear whether written contracts must be made publicly available or whether only tariffs are required to be made publicly available. We therefore intend to seek further comment on the meaning of section 274(b)(3)(B) in CC Docket No. 96-152.

243. We agree with BellSouth that the section 274 "separated" electronic publishing affiliate or joint venture must maintain its books, records, and accounts in accordance with GAAP in order to satisfy section 274(b)(3)(C)'s requirement that transactions be "auditable in accordance with generally accepted auditing standards."[614] A requirement of GAAP imposes a set of uniform accounting principles. Such uniformity will assist the Commission in ensuring that transactions between "separated" affiliates or joint ventures required under section 274 and their affiliated BOCs are conducted "in a manner consistent with such independence" in accordance with section 274(b)(3)(A).

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[610] 47 U.S.C. § 274(b)(3)(A).

[611] See NAA Comments at 4.

[612] 47 U.S.C. § 274(b).

[613] Id. § 274(b)(3)(B).

[614] Id. § 274(b)(3)(C).

244. For the same reasons discussed in section IV.B.1.b. above with regard to section 272, we conclude that we should conform our valuation methods governing the provision of services between an electronic publishing "separated" affiliate or joint venture and the BOC with which it is affiliated to those governing asset transfers. We therefore will require all non-tariffed affiliate transactions to be recorded at prevailing price if such price exists, and otherwise at the higher of cost and estimated fair market value when the carrier is the seller or transferor, and at the lower of cost and estimated fair market value when the carrier is the buyer or transferee. We will continue to define the applicable cost benchmarks as net book cost for asset transfers and fully distributed costs for service transfers. Although section 274(b)(4) only refers to asset transfers, we read section 274's requirement that the "separated" affiliate or joint venture and the BOC with which it is affiliated "carry out transactions . . . in a manner consistent with such independence" to prohibit the "separated" affiliate or joint venture and the BOC with which it is affiliated from subsidizing electronic publishing services from regulated telecommunications services. We designed our affiliate transactions rules to prevent such cross-subsidization. We therefore conclude that the affiliate transactions rules, as we modify them in this Order, should apply to all transactions--both asset transfers and the provision of services--between a BOC and its "separated" affiliate or joint venture engaged in electronic publishing activities permitted under section 274.

f. Miscellaneous

245. Section 274(d) requires a BOC under common ownership or control with a electronic publishing "separated" affiliate or joint venture to "provide network access and interconnections for basic telephone service to electronic publishers at just and reasonable rates that are tariffed (so long as rates for such services are subject to regulation) and that are not higher on a per-unit basis than those charges for such services to any other electronic publisher or any separated affiliate engaged in electronic publishing."[615] In the *NPRM*, we tentatively concluded that we should apply our modified affiliate transactions rules to the provision of "network access and interconnections for basic telephone service" by a BOC under common ownership or control with an electronic publishing "separated" affiliate or joint venture to such a "separated" affiliate or joint venture to ensure compliance with the requirements of section 274(d).[616] We sought comment on this tentative conclusion.

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615 Id. § 274(d).

616 NPRM, 11 FCC Rcd at 9110 para. 118.

Comments:

246. BellSouth and NAA support the Commission's tentative conclusion that our affiliate transactions rules should be applied to the provision of "network access and interconnections for basic telephone service" by a BOC under common ownership or control with an electronic publishing "separated" affiliate or joint venture to such a "separated" affiliate or joint venture to ensure compliance with the requirements of section 274(d).[617] YPPA disagrees.[618] YPPA maintains that the Act requires that network access and interconnection be just, reasonable, and according to a filed tariff (so long as rates for such services are subject to regulation). Therefore, YPPA asserts that section 274(d) requires that the rates charged to affiliated and unaffiliated electronic publishers must be the same.[619]

Discussion:

247. We adopt our tentative conclusion that our modified affiliate transactions rules apply whenever a BOC under common ownership or control with an electronic publishing "separated" affiliate or joint venture provides network access and interconnections for basic telephone service to such "separated" affiliates or joint venture. YPPA's argument that section 274(d) requires that the rates charged to affiliated and unaffiliated electronic publishers must be the same was raised, and will be addressed, in a separate proceeding.[620]

4. Separated Operations under Sections 260 and 271 through 276

248. Even when sections 260 and 271 through 276 do not require BOCs or other incumbent local exchange carriers to offer services through a separate affiliate, an incumbent LEC might choose to perform these activities through an affiliate. At paragraph 118 of the *NPRM*, we tentatively concluded that application of our affiliate transactions rules, as we proposed to modify them, to transactions between an incumbent local exchange carrier and any of its affiliates engaged in activities that sections 260, 275, and 276 might permit or require the carrier to offer through a separate affiliate would safeguard against the subsidies prohibited by sections 260, 275, and 276. We invited comment on this tentative conclusion.

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617 BellSouth Comments at 46; NAA Comments at 5.

618 YPPA Comments at 8.

619 Id.

620 See id. Telemessaging, Electronic Publishing, and Alarm Monitoring Services, CC Docket No. 96-152, FCC 96-310, Notice of Proposed Rulemaking at para. 67 (rel. July 18, 1996).

249. In the *NPRM*, we also asked commenters to identify any interLATA telecommunications services, besides the interLATA telecommunications services that section 272 requires BOCs to provide through a separate affiliate, that the BOCs might choose to provide through a separate affiliate and for which we should develop appropriate affiliate transactions rules.[621] We tentatively concluded that we should apply our affiliate transactions rules to transactions between each BOC and any interLATA telecommunications services affiliate it establishes. We invited comment on this tentative conclusion. We also asked whether and how we should adapt our affiliate transactions rules for such transactions and whether we should adopt special valuation methodologies for these transactions that would recognize the regulated status of the affiliates on both sides of the transactions.

Comments:

250. Most parties, including interexchange carriers, BOCs, and trade associations agree with the Commission's proposal to apply affiliate transactions rules to transactions between a BOC and its separate affiliates, even if the Act does not require the activities at issue in the transactions to be conducted through a separate affiliate.[622] In particular, AT&T contends that any contrary rule would allow a BOC to transfer operations that it could offer on an integrated basis to an affiliate in order to circumvent affiliate transactions rules and engage in cross-subsidization.[623] APCC argues that the "available for public inspection" requirement of section 272(b)(5) should cover all transactions between BOCs or other incumbent local exchange carriers and these "voluntary" affiliates.[624]

Discussion:

251. We agree with the commenters that assert that our affiliate transactions rules should apply to transactions between an incumbent local exchange carrier and any of its affiliates engaged in activities of the types permitted by sections 260 and 271 through 276, regardless of whether the Act requires those activities to be conducted through a separate affiliate. As discussed in detail below, various provisions of the Act prohibit cross-subsidization through transactions between incumbent local exchange carriers and any affiliates

[621] NPRM, 11 FCC Rcd at 9110 para. 119. Such interLATA telecommunications services may include "out-of-region" interstate, interexchange services. See also Interexchange Notice at paras. 56-62.

[622] See Ameritech Comments at 28; APCC Comments at 21; AT&T Comments at 8; CTA Comments at 14; USTA Comments at 27; US West Comments at 25; Worldcom Comments at 31; AT&T Reply at 5.

[623] AT&T Comments at 8.

[624] APCC Comments at 24.

that these incumbent local exchange carriers choose to establish in order to provide the competitive activities permitted under sections 260 and 271 through 276.

252. Earlier we concluded that telemessaging is an information service and that BOC provision of telemessaging on an interLATA basis is subject to the separate affiliate requirements of section 272.[625] Non-BOC incumbent local exchange carriers, however, are not required to offer telemessaging services through a separate affiliate, but rather may choose to do so subject to section 260's requirement that "[a]ny local exchange carrier subject to the requirements of section 251(c) . . . shall not subsidize its telemessaging service directly or indirectly from its telephone exchange service or its exchange access."[626] In order to protect against the subsidies prohibited by section 260, we conclude that we must apply our affiliate transactions rules to all transactions between non-BOC incumbent local exchange carriers and their affiliates engaged in telemessaging activities.

253. Although section 272(a)(2)(B) does not require BOCs to provide certain types of incidental interLATA services, defined in section 271(g), through an affiliate, a BOC could still choose to provide these services through an affiliate subject to section 271(h)'s requirement that provision of these services by a BOC "will not adversely affect telephone exchange service ratepayers or competition in any telecommunications market."[627] In order to protect against the subsidies prohibited by section 271(h), we conclude that we must also apply our affiliate transactions rules to all transactions between BOCs and their affiliates providing incidental interLATA services.

254. Non-BOC incumbent local exchange carriers, although not required to do so, may choose to offer alarm monitoring services through a separate affiliate subject to section 275's requirement that an incumbent local exchange carrier "not subsidize its alarm monitoring services either directly or indirectly from telephone exchange service operations."[628] In order to protect against the cross-subsidies prohibited by section 275, we conclude that we must apply our affiliate transactions rules to all transactions between non-BOC incumbent local exchange carriers and their affiliates engaged in alarm monitoring activities.

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[625] See discussion in section III.B.1., supra.

[626] 47 U.S.C. § 260(a)(1).

[627] Id. § 271(h).

[628] Id. § 275(b).

255. Incumbent local exchange carriers, including BOCs, although not required to do so, may choose to offer payphone service through a separate affiliate.[629] Our *Pay Telephone Reclassification Order* reclassified payphone service as a nonregulated activity and required that the nonstructural safeguards described in our Computer III Orders, which include our affiliate transactions rules, be applied to the provision of payphone services by local exchange carriers.[630] As a result, our existing affiliate transactions rules apply to transactions between incumbent local exchange carriers and their affiliates engaged in payphone service.

256. Although section 272(a)(2)(B) does not require BOCs to provide out-of-region interLATA telecommunications services through an affiliate, a BOC could still choose to do so. Moreover, non-BOC incumbent local exchange carriers, although not required to do so, may choose to provide interLATA telecommunications services of the types described in section 271 through an affiliate. Sections 271 and 272, however, contain no language prohibiting cross-subsidization in the case of activities voluntarily provided through affiliates. Although sections 271 and 272 contain no language prohibiting cross-subsidization, Section 254(k) mandates that "[a] telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition."[631] The language of section 254(k) is broad in scope, prohibiting cross-subsidization in all transactions between an incumbent local exchange carrier and any affiliate that provides any of the competitive services permitted under sections 260 and 271 through 276. Accordingly, in order to protect against the subsidies prohibited by section 254(k), we conclude we must apply our affiliate transactions rules to all transactions between incumbent local exchange carriers and their affiliates providing any of the competitive services of the types permitted under sections 260 and 271 through 276.

257. Our existing affiliate transactions rules do not protect against subsidies from an incumbent local exchange carrier's exchange services and exchange access flowing to its affiliate providing regulated telecommunications services, such as in-region services, out-of-region services, or certain types of incidental services.[632] Our affiliate transactions rules, however, are necessary to ensure that cross-subsidization of these services is prevented as required by sections 271(h) and 254(k). Earlier we concluded that interLATA telecommunications services, including in-region services, out-of-region services and certain

[629] See id. § 276(a).

[630] Pay Telephone Reclassification Order at para. 157.

[631] 47 U.S.C. § 254(k).

[632] See Joint Cost Reconsideration Order, 2 FCC Rcd at 6297 para. 122.

types of incidental services, should be treated by the BOCs like nonregulated activities for federal accounting purposes.[633] This treatment will prevent cross-subsidization by triggering the application of our affiliate transactions rules. Accordingly we conclude that interLATA telecommunications services should be treated like nonregulated activities for federal accounting purposes whenever these services are provided by any incumbent local exchange carrier through an affiliate.

258. We find unpersuasive APCC's assertion that the requirement in section 272(b)(5) that transactions be "available for public inspection" should apply to all transactions between incumbent local exchange carriers and their affiliates. The language of section 272(b)(5) clearly imposes the "available for public inspection" requirement only upon transactions between BOCs and their affiliates that are specifically required under section 272, and not to transactions involving activities that a BOC merely chooses to provide through an affiliate.[634] Moreover, the "available for public inspection" requirement of section 272(b)(5) does not apply to transactions involving non-BOC incumbent local exchange carriers and their affiliates.[635]

V. OTHER MATTERS

A. Price Caps

1. General

259. Our existing Part 64 cost allocation rules were developed when all local exchange carriers were still subject to cost-based, rate-of-return regulation. Today, we rely upon price cap, rather than rate-of-return regulation to ensure that rates for the interstate services of the largest incumbent local exchange carriers, including the BOCs, are reasonable. In adopting the federal price cap plan, we were influenced by some State plans that moved away from the traditional rate-of-return regulation.[636] Under the Commission's plan, price cap indices limit the prices that incumbent local exchange carriers may charge for their regulated interstate services. The indices are adjusted each year in accordance with a formula that accounts for changes in inflation and industry-wide changes in productivity.

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[633] See discussions in sections III.B.2.a. and IV.B.1.d., supra.

[634] See 47 U.S.C. § 272(b)(5).

[635] See id. § 272.

[636] For example, the New York State Department of Public Service had a rate freeze in effect. The California Public Utilities Commission was establishing a similar alternative regulatory framework.

2. Exogenous Costs and Part 64

260. Under our price cap rules for incumbent local exchange carriers, most changes in a carrier's costs of providing regulated services are treated as "endogenous," which means they do not result in adjustments to the carrier's price cap indices. Certain cost changes, however, triggered by administrative, legislative, or judicial action that are beyond the control of the carriers may result in adjustments to those indices. The Commission concluded that failing to recognize these cost changes by adjusting price cap indices would either unjustly punish or reward the carrier.[637] Price cap carriers may claim adjustments to their indices based on costs that are beyond their control if those costs are not otherwise accounted for in the price cap formula. Such costs are defined as "exogenous."[638] The Commission has found that those types of cost changes should be treated "exogenously" to ensure that price cap regulation does not lead to unreasonably high or unreasonably low rates.[639]

261. Our price cap rules for incumbent local exchange carriers specify that "[s]ubject to further order of the Commission, those exogenous cost changes shall include cost changes caused by . . . [t]he reallocation of investment from regulated to nonregulated activities pursuant to [section 64.901 of the Commission's rules]."[640] In the *NPRM*, we tentatively concluded that a strict reading of our price cap rules requires exogenous adjustments to price cap indices only to the extent amounts are reallocated "from regulated to nonregulated activities."[641] We invited comment on this tentative conclusion and asked whether all such

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637 LEC Price Cap Order, 5 FCC Rcd at 6807 para. 166.

638 See 47 C.F.R. § 61.45(d).

639 The Commission has determined, however, that not all changes beyond the carrier's control should be treated exogenously. For example, a general change in tax rates is outside the carrier's control, but will be reflected in the inflation factor used to adjust price caps annually. Exogenous treatment of a tax change would thus unfairly "double count" its impact. The Commission concluded that only changes that "uniquely or disproportionately affect LECs" would be considered for exogenous treatment. LEC Price Cap Order, 5 FCC Rcd at 6808 para. 177. In a subsequent order, GNP-PI, the gross national product price index, was replaced by the gross domestic product price index (GDP-PI) as the inflation factor in the price cap formula. Price Cap Performance Review for Local Exchange Carriers, Report and Order, CC Docket No. 94-1, 10 FCC Rcd 8961, 9116 para. 351 (1995) ("LEC Price Cap Performance Review") aff'd sub nom. Bell Atlantic Telephone Companies v. FCC, 79 F.3d 1195 (D.C. Cir. 1996).

640 47 C.F.R. § 61.45(d)(1)(v). We only treat accounting cost changes attributable to changes in USOA requirements exogenously to the extent they represent economic cost changes caused by administrative, legislative, or judicial requirements beyond the control of the carriers that are not reflected in the GDP-PI. LEC Price Cap Performance Review, 10 FCC Rcd at 9090 para. 293.

reallocation to nonregulated activities that may result from the provision of telemessaging service should trigger an adjustment to lower price cap indices. We also sought comment on the potential exogenous treatment of new investment in network plant to be used for telemessaging service.

Comments:

262. The BOCs argue, without exception, that section 61.45(d)(1)(v) does not require a price cap adjustment for reallocation of network investment from regulated to nonregulated activities.[642] Several of the local exchange carriers argue that the exogenous cost rule in section 61.45(d)(1)(v) was only intended to deter under-forecasting of nonregulated usage pursuant to section 64.901(b)(4).[643] USTA, US West and Bell Atlantic assert that exogenous treatment would act as a disincentive for future investment in telecommunications capabilities.[644] NYNEX, Bell Atlantic, USTA, Ameritech and US West all assert that exogenous treatment would result in a double counting of the cost of network investment.[645] NYNEX further argues that a reallocation of costs from regulated to nonregulated activities would only result in a change in how costs are recorded and not a change in economic cash flow which would require exogenous treatment.[646]

263. Parties other than local exchange carriers generally contend that exogenous adjustments to price cap indices are required when costs are reallocated from regulated to nonregulated activities.[647] In particular, Sprint maintains that the current price cap indices do not reflect the reallocated costs and therefore would not amount to a double counting of

[641] NPRM, 11 FCC Rcd at 9114 para. 125.

[642] Ameritech Comments at 10; Bell Atlantic Comments at 11; BellSouth Comments at 48; NYNEX Comments at 31; PacTel Comments at 37-40; SBC Comments at 49-50; US West Comments at 28.

[643] Ameritech Comments at 10; PacTel Comments at 37-40; SBC Comments at 50; USTA Comments at 9.

[644] Bell Atlantic Comments at 11; NYNEX Comments at 31; USTA Comments at 8; US West Comments at 28; NYNEX Reply at 20-21.

[645] Ameritech Comments at 10; Bell Atlantic Comments at 11; NYNEX Comments at 3; USTA Comments at 8-9; US West Comments at 28; NYNEX Reply at 20-21.

[646] NYNEX Comments at 31; NYNEX Reply at 20-21.

[647] GSA Comments at 8; Sprint Comments at 15; AT&T Reply at 15. See also MCI Comments at 38.

network investment.[648] Furthermore, because exogenous treatment does not apply to new investment, Sprint argues that no disincentive is created.[649]

264. Sprint and GSA contend that new investment associated with nonregulated services should initially be associated to a nonregulated activity.[650]

Discussion:

265. Under the current regulatory scheme, only exogenous treatment can ensure that the benefits of competition are in fact shared with regulated ratepayers. When the Commission adopted its cost allocation requirements, it specifically found that "the reallocation rules are essential to the integrity of a cost allocation system . . . which seeks to prevent regulated activities from absorbing nonregulated costs, either at the start of a forecast period or subsequently."[651] We find unpersuasive the argument that exogenous treatment of reallocated costs would in some way discourage local exchange companies from investing in telecommunications capabilities. We agree with Sprint that exogenous treatment of reallocated costs will not result in double counting of network investment because those costs are not reflected in the current price cap indices. Moreover, while it is true that exogenous treatment of reallocated costs will reduce the rate base for non-competitive services, such as exchange service and exchange access, the 1996 Act allows local exchange companies to take advantage of new competitive markets with new resulting revenue streams virtually unfettered by regulation. Thus, we conclude that when costs are reallocated from regulated to nonregulated activities, exogenous adjustments must be made to price cap indices in accordance with section 61.45(d)(1)(v). Exogenous adjustments to the price cap indices will only be eliminated when competition in the local service market eliminates the need for cost allocation rules altogether.

266. We agree with Sprint and GSA that any portion of new investment associated with nonregulated services should be booked initially to a nonregulated activity and, therefore, will not receive exogenous treatment.

648 Sprint Reply at 5.

649 Id.

650 GSA Comments at 8; Sprint Comments at 16.

651 Joint Cost Reconsideration Order, 2 FCC Rcd at 6291 para. 64.

3. Part 64 and Sharing

267. Under our price cap rules, incumbent local exchange carriers can select the productivity factor they will use to determine annual adjustments to their price cap indices.[652] If they choose not to select the highest productivity factor permitted under our rules, they are required to "share." Under sharing, incumbent local exchange carriers earning in excess of prescribed earnings levels must refund a portion of the excess earnings in subsequent rate periods by reducing their price cap indices.[653] Those earnings are equal to the incumbent local exchange carrier's interstate revenues less the regulated interstate costs. Improper cost allocation can increase the incumbent local exchange carrier's regulated interstate costs and therefore can reduce the carrier's sharing obligations. We note, however, that in their most recent annual tariff filings all but four price cap local exchange carriers elected the highest interim productivity factor we had prescribed, which exempts them from sharing obligations for the 1995-96 access year.[654]

268. In the *NPRM*, we asked commenters to address whether our elimination of sharing obligations permanently for price cap carriers would eliminate the need for Part 64 cost allocation processes in our regulation of these companies.[655] We also sought comment on how the relationship of our cost allocation rules to price cap local exchange carriers should influence the outcome of this proceeding.

Comments:

269. The BOCs generally argue that we should eliminate our accounting safeguards or forebear from enforcing them under section 10 of the Act on the ground that our current price cap plan removes any incentive or ability for local exchange carriers to cross-subsidize

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652 See 47 C.F.R. § 61.45(b).

653 See LEC Price Cap Performance Review, 10 FCC Rcd at 9049 para. 197 (tentatively concluding that we should "eventually" eliminate sharing and move to a system of pure price caps). See also Price Cap Performance Review, Fourth Further Notice of Proposed Rulemaking, CC Docket No. 94-1, 10 FCC Rcd 13659, 13679 para. 127 (1995).

654 In the LEC Price Cap Performance Review, the Commission adopted interim price cap rules establishing three productivity factors from which local exchange carriers could select: 4.0 percent, 4.7 percent and 5.3 percent. No sharing obligation for the interim period is required of local exchange carriers that choose the highest factor. LEC Price Cap Performance Review, 10 FCC Rcd 8961. The four carriers that did not elect the highest interim productivity factor we had prescribed (5.3 percent) are Southern New England Telephone Company, NYNEX, US West and a portion of GTE.

655 NPRM, 11 FCC Rcd at 9113 para. 124.

competitive services.[656] The BOCs generally emphasize that no-sharing price cap carriers cannot cross-subsidize because no link between costs and rates exists in the absence of a sharing requirement.[657] Ameritech argues that even if it were possible to misallocate costs, it would be practically insignificant because local exchange carriers would have to incorporate the increased costs into higher rates while competing with other providers to retain customers.[658] USTA argues that any attempt to misallocate costs from nonregulated to regulated activities would serve no purpose because economies of scope are realized through the productivity offset.[659]

270. Parties other than local exchange carriers generally maintain that there is a linkage between costs and rates under price caps that justifies the continued application of our accounting safeguards.[660] These parties generally argue that under our current price cap plan, local exchange carriers retain the annual option of selecting a productivity factor subject to sharing requirements that are dependent on rate of return, thereby preserving the incentive to shift costs.[661] These parties also generally contend that our accounting safeguards are necessary to monitor the BOCs' rates of return for regulated services in order to evaluate whether the price cap system is in the public interest, and determine whether adjustments to the productivity factor must be made.[662] Sprint and APCC argue that even in the absence of a sharing requirement, carriers are able to request adjustments to their price cap indices for exogenous cost changes, which requires the Commission to review costs.[663]

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[656] Ameritech Comments at 4, 11; Bell Atlantic Comments at 3; BellSouth Comments at 46; NYNEX Comments at 2,5; PacTel Comments at 2,40; SBC Comments at 4-5, 26; USTA Comments at 5-7, 12; Coalition Reply at 2.

[657] Ameritech Comments at 4,16; PacTel Comments at 2,6,40; SBC Comments at 4,6. See also Coalition Reply at 2; PacTel Reply at 13; USTA Comments at 5-9.

[658] Ameritech Comments at 17.

[659] USTA Comments at 7.

[660] AT&T Comments at 3; GSA Comments at 7; APCC Reply at 4; MCI Reply at 3; TIA Reply at 7; Worldcom Reply at 4.

[661] See AT&T Comments at 3; APCC Reply at 4; MCI Reply at 3; TIA Reply at 7.

[662] MCI Comments at 39; Sprint Comments at 17-18; Worldcom Comments at 32; APCC Reply at 4; Ohio Reply at 2-3; TIA Reply at 7. See also AT&T Comments at 3-4; GSA Reply at 3; MCI Reply at 4; Sprint Reply at 2.

[663] APCC Reply at 4; Sprint Reply at 2.

Discussion:

271. The fact that an incumbent local exchange carrier subject to the Commission's price cap regulation does not currently have a potential sharing obligation does not obviate the need for rules governing their allocations of costs between regulated and nonregulated activities. As described above, our interim price cap rules permit incumbent local exchange carriers to select the productivity factor they will use to determine annual adjustments to their price cap indices.[664] Incumbent local exchange carriers may select among three productivity factor choices, two of which impose sharing obligations if the local exchange carrier's interstate earnings exceed specified benchmarks and permit low-end adjustments if interstate earnings fall below specified benchmarks. In addition, our price cap rules permit incumbent local exchange carriers to file rate increases that exceed their applicable price cap indices, provided they can satisfy a stringent cost showing.[665] Consequently, our current system of interstate price cap regulation does not eliminate the need for cost allocation rules. Moreover, because these incumbent local exchange carriers' intrastate services may be subject to cost-of-service regulation or to a form of price cap regulation that involves potential sharing obligations or periodic earnings reviews, the incumbent local exchange carriers may still have an incentive to assign a disproportionate share of costs to regulated accounts. We recognize that changes in the competitive conditions of local telecommunications markets in the future may cause us to re-examine the continued need for our Part 64 cost allocation rules; but, based on the record in this proceeding, those rules remain important to our efforts to ensure that the rates for regulated services are just, reasonable, and non-discriminatory.

B. Section 254(k)

272. In the *NPRM*, we sought comment on whether our proposals related to sections 260 and 271 through 276 are sufficient to implement section 254(k)'s requirement that carriers not "use services that are not competitive to subsidize services that are subject to competition."[666]

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[664] See 47 C.F.R. § 61.45(b).

[665] Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6823 paras. 303-04 (1990).

[666] NPRM, 11 FCC Rcd at 9114 para. 125. See also 47 U.S.C. § 254(k).

Comments:

273. NYNEX and BellSouth contend that the Commission's accounting safeguards are sufficient to satisfy the requirements of section 254(k).[667]

274. Several commenters addressed the portion of section 254(k) that requires "[t]he Commission, with respect to interstate services . . . [to] establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services."[668]

Discussion:

275. We conclude that the accounting safeguards that we adopt in this Order with respect to sections 260 and 271 through 276 are sufficient to implement section 254(k)'s requirement that carriers not "use services that are not competitive to subsidize services that are subject to competition." Our existing accounting safeguards, with the modifications that we adopt in this Order, prevent subsidization of competitive nonregulated services, such as those addressed in Sections 260 and 271 through 276 by subscribers to an incumbent local exchange carrier's regulated telecommunications services. We find that the Act does not require additional safeguards for these particular statutory services.

276. We note that the portion of section 254(k) that requires "[t]he Commission, with respect to interstate services . . . [to] establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services" will not be addressed in this Order but will be the subject of a separate rulemaking proceeding.

VI. FINAL REGULATORY FLEXIBILITY ACT ANALYSIS

277. As required by section 603 of the Regulatory Flexibility Act ("RFA"), as amended,[669] an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the

[667] BellSouth Comments at 49; NYNEX Comments at 3.

[668] 47 U.S.C. § 254(k). See, e.g., Bell Atlantic Comments at 5; PacTel Comments at 43; USTA Comments at 5; US West Comments at 29.

[669] See 47 U.S.C. § 603.

NPRM. In the *NPRM*, the Commission certified that the rules it proposed to adopt in this proceeding would not have a significant economic impact on a substantial number of small entities because the proposed rules did not pertain to small entities.[670] No comments were received concerning the proposed certification. For the reasons stated below, we certify that the rules adopted herein will not have a significant economic impact on a substantial number of small entities.[671] This certification conforms to the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").[672]

278. The RFA defines a "small business" to be the same as a "small business concern" under the Small Business Act.[673] Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration.[674] Section 121.201 of the Small Business Administration regulations defines a small telecommunications entity in SIC code 4813 (Telephone Companies Except Radio Telephone) as any entity with 1,500 or fewer employees at the holding company level.[675] Entities directly subject to these rule changes are engaged in the provision of local exchange and exchange access telecommunications services. These entities are generally large corporations that are dominant in their fields of operations and thus, are not "small entities" as defined by the Act.[676] While these companies may have fewer than 1,500 employees and thus fall within the SBA's definition of small telecommunications entity, we do not believe that such entities should be considered small entities within the meaning of the RFA. Because the small incumbent LECs subject to these rules are either dominant in their field of operations or are not independently owned and operated, consistent with our prior practice, they are excluded from the definition of "small entity" and "small business concerns."[677] Accordingly,

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670 NPRM, 11 FCC Rcd at 9113-14 para. 127.

671 5 U.S.C. § 605(b).

672 Id. §§ 601-611. SBREFA was enacted as Subtitle II of the Contract With America Advancement Act of 1996 ("CWAAA"), Pub. L. No. 104-121, 110 Stat. 847 (1996).

673 5 U.S.C. § 601(6) (adopting 15 U.S.C. § 632(a)(1)).

674 15 U.S.C. § 632. See, e.g., Brown Transport Truckload, Inc. v. Southern Wipers, Inc., 176 B.R. 82 (N.D. Ga. 1994).

675 13 C.F.R. § 121.201.

676 15 U.S.C. § 632(a)(1).

677 See Interconnection Order at paras. 1328-30, 1342.